



**MARKET CONDUCT EXAMINATION REPORT  
DATED DECEMBER 17, 2010**

**COVERING THE TIME PERIOD OF JANUARY 1, 2009 THROUGH  
DECEMBER 31, 2009**

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**TRUCK INSURANCE EXCHANGE**

**4680 Wilshire Boulevard  
Los Angeles, California 90010**

**NAIC Company Code 21709  
NAIC Group Code 0212**



**CONDUCTED BY:**

**COLORADO DIVISION OF INSURANCE**

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**TRUCK INSURANCE EXCHANGE  
4680 Wilshire Boulevard  
Los Angeles, California 90010**

**MARKET CONDUCT  
EXAMINATION REPORT**

**DATED DECEMBER 17, 2010  
COVERING THE TIME FRAME OF JANUARY 1, 2009 THROUGH DECEMBER 31,  
2009**

**Examination Performed by:**

**Division of Insurance Market Conduct Examiner**

**Jeffory A. Olson, CIE, FLMI, AIRC, ALHC  
Examiner-in-Charge**

**And**

**Independent Contract Examiner**

**Lucille E. Whittle, CIE, MCM**

December 17, 2010

The Honorable John J. Postolowski  
Interim Commissioner of Insurance  
State of Colorado  
1560 Broadway, Suite 850  
Denver, Colorado 80202

Commissioner Postolowski:

This market conduct examination of Truck Insurance Exchange (“Truck”) was conducted pursuant to §§ 10-1-203, 10-1-204, 10-1-205, and 10-3-1106, C.R.S., which authorize the Commissioner of Insurance (“Commissioner”) to examine insurance companies. We examined Truck’s records as provided by the Company. Truck’s records were collected from various Company locations and delivered onsite to the examiners at the Truck’s home office located at 4680 Wilshire Boulevard, Los Angeles, California 90010. The market conduct examination covered policy audits and claims filed on unit cards with the National Council on Compensation Insurance (“NCCI”) during the period January 1, 2009 through December 31, 2009.

The following market conduct examiners respectfully submit the results of the examination.

Jeffory A. Olson, CIE, FLMI, AIRC, ALHC

Lucille E. Whittle, CIE, MCM

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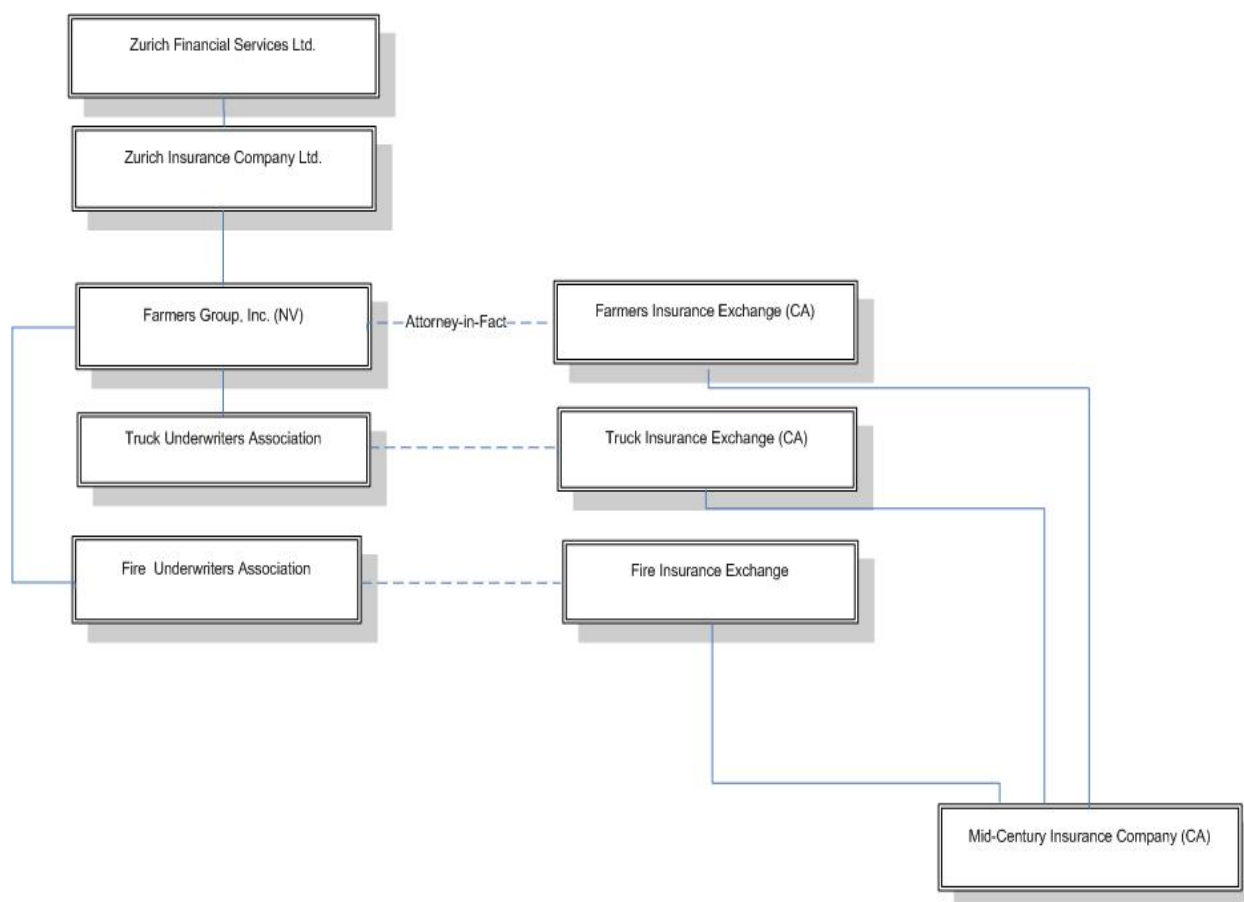
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**COMPANY PROFILE**

**The following profile is based on information provided by Truck:**

Truck Insurance Exchange was organized on February 5, 1935, under the laws of California and commenced business on February 5, 1935. Truck is currently licensed in fifty (50) states including Colorado. Truck was licensed in Colorado on July 12, 1935.

The following abbreviated organizational chart depicts Truck's relationship within the holding company system as of December 31, 2009:



Premium and Market Share as of December 31, 2009:

Total Written Premium:	\$31,436,000*
Market Share:	4.23%*
Workers Compensation:	\$10,693,000*
Market Share:	1.61%*

\* As shown in the 2009 Edition of the Colorado Insurance Industry Statistical Report

**PURPOSE AND SCOPE**

A state market conduct examiner with the Colorado Division of Insurance (“Division”), who was assisted by an independent contract examiner, reviewed certain business practices of Truck. This market conduct examination was conducted in accordance with Colorado insurance laws §§ 10-1-203, 10-1-204, 10-1-205, and 10-3-1106, C.R.S., which empower the Commissioner to examine any entity engaged in the business of insurance in the State of Colorado. The findings in this report, including all work products developed during its production, are the sole property of the Division.

The purpose of this examination was to determine Truck’s compliance with Colorado insurance laws related to workers’ compensation business in Colorado. Examination information contained in this report will serve only this purpose, except as provided by law pursuant to §§ 10-1-204 and 205, C.R.S. The conclusions and findings of this examination will become a public record.

The examiners conducted the examination in accordance with procedures developed by the Division and model procedures developed by the National Association of Insurance Commissioners (NAIC). They relied primarily on records and materials supplied by Truck. The market conduct examination covered policies audited and reported on unit statistical cards and claims filed on unit statistical cards to the NCCI during the period January 1, 2009 through December 31, 2009.

The examination included review of the following:

- Company Operations and Management
- Contract Forms
- Rates
- Underwriting: New and Renewal Business
- Claims Reporting via Unit Cards to the NCCI

The final examination report is a report written by exception. References to additional practices, procedures, or files that did not exceed the sample tolerance levels established by the NAIC were omitted. Based on the review of the above areas, comment forms were prepared for Truck identifying any concerns and/or discrepancies. The comment forms contained a section that permitted Truck to submit written responses to the examiners’ comments.

For the period under examination, the examiners included statutory citations and regulatory references related to workers’ compensation insurance laws as they pertained to insurance companies. Examination findings may result in administrative action by the Division. The examiners may not have discovered all unacceptable or non-complying practices of Truck. Failure to identify specific practices of Truck does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any insurance company or insurance company product.

## **METHODOLOGY**

The examiners reviewed Truck’s business practices to determine compliance with Colorado insurance laws. For this examination, special emphasis was given to the statutes and regulations as shown below.

<b>Statute or Regulation</b>	<b>Subject</b>
Section 8-41-202, C.R.S.	Rejection of coverage by corporate officers and others.
Section 10-3-1104, C.R.S.	Unfair methods of competition and unfair or deceptive acts or practices.
Section 10-4-401, C.R.S.	Purpose – applicability.
Section 10-4-403, C.R.S.	Standards for rates – competition – procedure – requirement for independent actuarial opinions regarding 1991 legislation.
Section 10-4-404, C.R.S.	Rate Administration.
Section 10-4-405, C.R.S.	Filing of rating information – certain coverages.
Section 10-4-413, C.R.S.	Records required to be maintained.
Section 10-4-416, C.R.S.	Prohibiting changes in rates or coverages.
Section 10-4-421, C.R.S.	Notice of rate increases and decreases.
Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Insurance Regulation 5-1-10	Rate and Rule Filings Submission Requirements Property and Casualty Insurance
Insurance Regulation 5-1-11	Risk Modification Plans
Insurance Regulation 5-3-1	Workers’ Compensation Risk Management Regulation
Insurance Regulation 5-3-2	Workers’ Compensation Insurance Data Reporting Regulation
Insurance Regulation 5-3-4	Concerning Standards for Not-At-Fault Motor Vehicle Accidents Under Workers’ Compensation, Loss Limitation in Calculating Experience Modifications and Distribution of Losses in Excess of the Loss Limitation
Insurance Regulation 5-3-5	Workers’ Compensation Deductible Reimbursement

### **Sampling Methodology**

In accordance with the sampling methodology and sample sizes as set forth in the 2009 NAIC Market Regulation Handbook (“Handbook”) the examiners reviewed the files that were randomly selected to constitute the sample base from a larger population of files. These random samples consisted of three (3) unique populations.

Where the error rates of the samples indicated it would be appropriate to select an additional sample per the sampling instructions in the Handbook, but the initial results were conclusive, Truck was afforded the opportunity to agree that the initial sample was appropriate or request that an additional sample be selected. In each case, Truck indicated that the initial sample was appropriate.

When sampling was involved, a minimum error tolerance level of seven percent (7%) for claims, and ten percent (10%) for other samples, was established per the Handbook to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance level was not utilized.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from Truck's established policies, procedures, rules and/or guidelines.

### **Company Operations and Management**

The examiners reviewed Truck's management and administrative controls, the Certificate of Authority, record retention, underwriting guidelines, and timely cooperation with the examination process.

### **Contract Forms**

Truck provided specimen copies of forms made available for use with workers' compensation policies written in Colorado. The examiners reviewed each of the provided forms as listed below:

<u>FORM NAME</u>	<u>FORM NUMBER</u>
Additional Provisions	C5285401
Monthly Payment Agreement	E0022101
Workers' Compensation Endorsement	E5000201
Workers' Compensation Endorsement	E5001201
Workers' Compensation General Change Endorsement	E5002401
Employers' Liability Limits Amendatory Endorsement	E5003201
Combined Group Dividend Agreement	E5014301
Level Premium Pay Endorsement	E5016301
Participation Endorsement	E5021301
Premium Modification Endorsement	E5112201
Rating for Increase Limit for Part Two	E5153501
Workers' Compensation Monthly Payment Agreement	E5426101 E5022
Extension of Information Page	E5459101
Waiver of Our Right to Recover From Others Endorsement - Blanket	J6369101
Waiver of Our Right to Recover From Others Endorsement - Specific	J6370101

### **Rates**

Truck provided copies of its rate filings and loss cost multipliers applicable to policies audited and reported on unit statistical cards to the NCCI during the period January 1, 2009 through December 31, 2009. The examiners reviewed actual rates and loss cost multipliers being charged Colorado workers' compensation insureds during the scope of the examination.

### **Underwriting – New and Renewal Business**

The examiners selected a random sample of 113 policies from a total population of 1,028 policies without experience modifiers and 113 policies from a total population of 1,218 policies with experience modifiers for examination.

### **Claims Reporting via Unit Cards to the NCCI**

The examiners selected a random sample of 107 claims reported on unit statistical cards to the NCCI from a total population of 2,342 reported claims.



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**EXAMINATION REPORT SUMMARY**

The examination resulted in a total of four (4) findings in which Truck was not in compliance with Colorado statutes and regulations. The following is a summary of the examiners' findings.

**Company Operations and Management:** The examiners identified one (1) area of concern in the review of Truck's Operations and Management:

**Issue A1: Failure, in some instances, to maintain records required for market conduct purposes.**

**Rates:** The examiners identified one (1) area of concern in the review of Truck's rates:

**Issue F1: Failure to file its method for determining payroll for use in an estimated audit.**

**Underwriting: New and Renewal Business:** The examiners identified two (2) areas of concern during the review of New and Renewal Business:

**Issue G1: Failure, in some instances, to provide Cost Containment Certification Forms to verify insureds had been informed about the possible premium dividend available if a business entity's risk management program was certified by the Colorado Cost Containment Board.**

**Issue G2: Failure, in some instances, to provide Designated Medical Provider Forms to verify insureds had been informed about the premium differential for selecting a designated medical provider.**

**Claims Reporting via Unit Cards to the NCCI:** In the area of Claims Reporting, no issues are addressed in the report.

A copy of Truck's official response to this final Market Conduct Report, if applicable, can be obtained upon request from the Division.

Results of previous market conduct examinations are available on the Division's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Division.

**TRUCK INSURANCE EXCHANGE**

**FACTUAL FINDINGS**

**COMPANY OPERATIONS AND MANAGEMENT**

**Issue A1: Failure, in some instances, to maintain records required for market conduct purposes.**

Section 8-41-202, C.R.S., Rejection of coverage by corporate officers and others, states in part:

- (1) Notwithstanding any provision of article 40 to 47 of this title to the contrary, a corporate officer of a corporation or a member of a limited liability company may elect to reject the provisions of articles 40 to 47 of this title. If so elected, said corporate officer or member shall provide written notice on a form approved by the division through a rule promulgated by the director of such election to the workers' compensation insurer of the employing corporation or company, if any, by certified mail. If there is no worker's compensation insurance company, the notice should be provided to the division by certified mail. Such notice shall become effective the day following the receipt of said notice by the insurer or the division.
- (2) A corporate officer's or member's election to reject the provisions of articles 40 to 47 of this title shall continue in effect so long as the corporation's or company's insurance policy is in effect or until said officer or member, by written notice to the insurer, revokes the election to reject said provisions.

Section 10-4-413, C.R.S., Records to be maintained, states in part:

- (1) Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of § 10-1-109(1), C.R.S., states in part:

...

Section 4.       Records Required For Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but limited to, company operations and management, policyholder services, claim's practices, rating underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality, assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years...

The examiners selected a random sample of 113 policies without experience modifiers from a population of 1028 policies for review. Four (4) policies were missing signed officer exclusion forms and thirty-four (34) policies were missing audit workpapers.

The following chart illustrates the significance of errors versus the population and sample examined:

<b>Policies Without Experience Modifiers</b>			
<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Total Error Rate</b>
1,028	113	38	34%

The examiners selected a random sample of 113 policies with experience modifiers from a population of 1218 policies for review. Eight (8) policies were missing signed officer exclusion forms and eighteen (18) policies were missing audit billings and/or audit work papers.

The following chart illustrates the significance of errors versus the population and sample examined:

<b>Policies With Experience Modifiers</b>			
<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Total Error Rate</b>
1,218	113	26	23%

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**Recommendation No. 1:**

No later than thirty (30) days from the date this report is adopted, Truck shall provide documentation demonstrating why it should not be considered in violation of §§ 8-41-202 and 10-4-413, C.R.S., and Colorado Insurance Regulation 1-1-7. In the event Truck is unable to show such proof, it shall provide written evidence to the Division that it has revised its procedures to ensure that all records required for market conduct purposes are retained and can be provided within the required time period as is mandated by Colorado insurance law.

**RATES**

**Issue F1: Failure to file its method for determining payroll for use in an estimated audit.**

Section 10-4-401, C.R.S., Purpose-applicability, states in part:

...

(3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows:

(a) Type I kinds of insurance, regulated by prior filing and approval of rating information, which shall be subject to all provisions of this part 4 unless specifically excluded by the terms of a section. The following kinds of insurance shall be classified as type I:

(I) Workers' compensation and employer's liability incidental thereto for any pure premium rate filed by a rating organization. ...

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title, medical malpractice by a joint underwriting association regulated under part 9 of this article, credit, workers' compensation and employer's liability incidental thereto and written in connection therewith for rates filed by insurers, and all other kinds of insurance that are subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406...

Colorado Insurance Regulation 5-1-10 - Rate and Rule Filings Submission Requirements Property and Casualty Insurance, promulgated under the authority of §§ 10-1-109, 10-3-1110, 10-4-404, and 10-4-404.5, C.R.S., states in part:

...

Section 5 Rules

...

C. Rule Filing General Requirements

...

2. *Every property and casualty company, including those writing workers' compensation and title insurance, is required by this regulation to provide a list of minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated. [Emphasis added.]*

The examiners selected a random sample of 113 policies without experience modifiers from a population of 1,028 policies for review. Thirty-one (31) policies contained payroll amounts that were increased 35% if a voluntary audit was requested but not received within forty-five (45) days of the request. This percentage was increased to 50% if an insured did not agree to a physical or telephone audit within sixty (60) days of a request. In these cases, an analyst was to try to make one more appeal to the agent and/or insured. Truck had published methods of estimating payroll in such cases which provided consistency; however, Truck had not filed this method with the Division even though its use effectively results in an increase in premium. Truck responded with its position that this estimated audit payroll procedure had not been filed with the Division because it was not an item listed in Colorado Insurance Regulation 5-1-10 as required to be filed.

The following chart illustrates the significance of errors versus the population and sample examined:

**Policies Without Experience Modifiers**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Total Error Rate</b>
1,028	113	31	27%

The examiners selected a random sample of 113 policies with experience modifiers from a population of 1,218 policies for review. Nine (9) policies contained payroll amounts that were increased 35% if a voluntary audit was requested but not received within forty (45) days of the request. This percentage was increased to 50% if an insured did not agree to a physical or telephone audit within sixty (60) days of a request. In these cases, an analyst was to try to make one more appeal to the agent and/or insured. Truck had published methods of estimating payroll in such cases which provided consistency; however, Truck had not filed this method with the Division even though its use effectively results in an increase in premium. Truck responded with its position that this estimated audit payroll procedure had not been filed with the Division because it was not an item listed in Colorado Insurance Regulation 5-1-10 as required to be filed.

The following chart illustrates the significance of errors versus the population and sample examined:

**Policies With Experience Modifiers**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Total Error Rate</b>
1,218	113	9	8%

**Recommendation No. 2:**

No later than thirty (30) days from the date this report is adopted, Truck shall provide documentation demonstrating why it should not be considered in violation of § 10-4-401, C.R.S., and Colorado Insurance Regulation 5-1-10. In the event Truck is unable to show such proof, it shall provide written evidence to the Division that it has filed with the Division its estimated audit payroll procedures as required by Colorado insurance law.



**UNDERWRITING: NEW AND RENEWAL BUSINESS**

**Issue G1: Failure, in some instances, to provide Cost Containment Certification Forms to verify insureds had been informed about the possible premium dividend available if a business entity's risk management program was certified by the Colorado Cost Containment Board.**

Colorado Insurance Regulation 5-1-11 - Risk Modification Plans, promulgated under the authority of §§ 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states in part:

...

Section 3 Rules

...

D. Workers' Compensation Cost Containment Certification

All workers' compensation insurers, including Pinnacol Assurance, shall disclose the availability of cost containment certification by the Colorado Workers' Compensation Cost Containment Board and the potential premium savings on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy. Such disclosure applies regardless of whether or not a risk is experience or schedule rated. Insurers shall require that the insured business entity indicate on a form developed by the insurer, that the business entity is aware of the possible premium dividend if the business entity's risk management program is certified by the Colorado Cost Containment Board. This form shall be made part of the insured business entity's underwriting file.

The examiners selected a random sample of 113 policies without experience modifiers from a population of 1,028 policies for review. Truck was not in compliance with Colorado insurance law in that it did not provide proof in the applicable underwriting files that it had disclosed to fourteen (14) workers' compensation insureds the premium savings available if the insureds obtained cost containment certification by the Colorado Workers' Compensation Cost Containment Board.

The following chart illustrates the significance of errors versus the population and sample examined:

Policies Without Experience Modifiers			
Population	Sample Size	Number of Exceptions	Total Error Rate
1,028	113	14	12%

The examiners selected a random sample of 113 policies with experience modifiers from a population of 1,218 policies for review. Truck was not in compliance with Colorado insurance law in that it did not provide proof in the applicable underwriting files that it had disclosed to twenty-six (26) workers' compensation insureds the premium savings available if the insureds obtained cost containment certification by the Colorado Workers' Compensation Cost Containment Board.

The following chart illustrates the significance of errors versus the population and sample examined:

Policies With Experience Modifiers			
Population	Sample Size	Number of Exceptions	Total Error Rate
1218	113	26	23%

**Recommendation No. 3:**

No later than thirty (30) days from the date this report is adopted, Truck shall provide documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 5-1-11. In the event Truck is unable to show such proof, it shall provide written evidence to the Division that it has revised its procedures to ensure that each business entity indicates on a form developed by the insurer that the business entity is aware of the possible premium dividend if the business entity's risk management program is certified by the Colorado Cost Containment Board, and that this form is retained in the insured business entity's underwriting file as required by Colorado insurance law.

**Issue G2: Failure, in some instances, to provide Designated Medical Provider Forms to verify insureds had been informed about the premium differential for selecting a designated medical provider.**

Colorado Insurance Regulation 5-1-11 - Risk Modification Plans, is promulgated under the authority of §§ 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states in part:

...

Section 3 Rules

...

D. Workers' Compensation Cost Containment Certification

On an annual basis, all workers' compensation insurers, including Pinnacol Assurance, shall disclose the premium differential on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy when the policyholder has selected a designated medical provider. Such disclosure applies regardless of whether a risk is schedule rated. Insurers shall require that the insured business entity indicate, on a form developed by the insurer, that the business entity is aware of the premium differential for selecting a designated medical provider.

The examiners selected a random sample of 113 policies without experience modifiers from a population of 1028 policies for review. Truck is not in compliance with Colorado insurance law in that it was unable to provide proof that it had disclosed to fourteen (14) workers' compensation insureds the premium differential available if the insureds selected a designated medical provider.

The following chart illustrates the significance of errors versus the population and sample examined:

Policies Without Experience Modifiers			
Population	Sample Size	Number of Exceptions	Total Error Rate
1,028	113	14	12%

The examiners selected a random sample of 113 policies with experience modifiers from a population of 1,218 policies for review. Truck is not in compliance with Colorado insurance law in that it was unable to provide proof that it had disclosed to twenty-six (26) workers' compensation insureds the premium differential available if the insureds selected a designated medical provider.

The following chart illustrates the significance of errors versus the population and sample examined:

Policies With Experience Modifiers			
Population	Sample Size	Number of Exceptions	Total Error Rate
1,218	113	26	23%

**Recommendation No. 4:**

No later than thirty (30) days from the date this report is adopted, Truck shall provide documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 5-1-11. In the event Truck is unable to show such proof, it shall provide written evidence to the Division that it has revised its procedures to ensure it requires each insured business entity to indicate on a form developed by the insurer, that the business entity is aware of the premium differential for selecting a designated medical provider, and that this form is retained in the insured's underwriting file as required by Colorado insurance law.

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**Examination Report Submission**

**Division of Insurance Market Conduct Examiner**

**Jeffory A. Olson, CIE, FLMI, AIRC, ALHC**

**And**

**Independent Contract Market Conduct Examiner**

**Lucille E. Whittle, CIE, MCM**

**Submit this report on this 17<sup>th</sup> day of December, 2010 behalf of:**

**The Colorado Division of Insurance  
1560 Broadway, Suite 850  
Denver, Colorado 80202**